

1 APPEARANCES:

2 JON K. ELLIS

1035 S. Second St.

3 Springfield, Illinois 62704

4 (Appearing on behalf of Joint
Petitioners.)

5

EDWARD D. McNAMARA, JR.

6 JOSEPH O'BRIEN

931 S. Fourth Street

7 Springfield, Illinois 62703

8 (Appearing on behalf of Preserve
Olympian Farmland, Intervenors.)

9

THOMAS J. HEALEY

10 17641 S. Ashland Ave.

Homewood, Illinois 60430

11

(Appearing on behalf of Illinois
12 Central Railroad Company via
teleconference.)

13

JASON JOHNSON

14 2300 S. Dirksen Pkwy.

Springfield, Illinois

15

(Appearing on behalf of Illinois
16 Department of Transportation.)

17 JOE VON DE BUR

527 E. Capitol

18 Springfield, Illinois 62701

19 (Appearing on behalf of staff of
the Illinois Commerce
20 Commission.)

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I N D E X

WITNESSES

DIRECT

CROSS

None

EXHIBITS

None.

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PROCEEDINGS

JUDGE DUGGAN: Pursuant to the authority vested in me by the State of Illinois and the Illinois Commerce Commission, I now call Docket No. T11-0134 for hearing.

May we have appearances for the record, starting with Mr. Ellis.

MR. ELLIS: Jon K. Ellis, the attorney for the joint petitioners, 1035 South Second Street, Springfield, Illinois 62704. Phone number is area code (217)528-6835.

JUDGE DUGGAN: Okay. Mr. Healey.

MR. HEALEY: Good morning, Your Honor. Thomas J. Healey (H-e-a-l-e-y). My address is 17641 South Ashland Avenue in Homewood, Illinois 60430. My phone number is (708)332-4381.

JUDGE DUGGAN: All right. And for the Department of Transportation?

Jason Johnson also with the Illinois Department of Transportation is present, and it's represented that Jennifer Kuntz would not be appearing today nor any other appearance being

1 entered on behalf of IDOT today.

2 For the intervenors, Mr. McNamara?

3 MR. McNAMARA: Judge, Edward D. McNamara, Jr.
4 and Joseph H. O'Brien. We're both attorneys admitted
5 to practice law in the State of Illinois. Our
6 business address is 931 South Fourth Street,
7 Springfield, Illinois 62703; phone number
8 (217) 528-8476.

9 We appear this afternoon on behalf of
10 Preserve Olympian Farmland, an unincorporated
11 association.

12 JUDGE DUGGAN: Very good.

13 Again, we'll let the record show that
14 Mr. O'Brien does appear here in person.

15 All right. First matter, this is a
16 status hearing, and it was set --

17 MR. McNAMARA: Judge, if I might.

18 JUDGE DUGGAN: I'm sorry. And on behalf of
19 Commission staff?

20 MR. VON DE BUR: Joe Von De Bur, Rail Safety
21 Specialist with the Illinois Commerce Commission, 527
22 East Capitol Avenue Springfield, Illinois 62701.

1 Phone is (217) 557-1286.

2 JUDGE DUGGAN: Very good. Thank you.

3 Okay. There is a pending motion for
4 amendment of the joint petition by interlineation
5 filed on behalf of petitioners by their attorney
6 Mr. Ellis, and then we received in response to that
7 the response of the intervenors.

8 We did not receive any other pleadings
9 or any type of responses from the railroad or the
10 Department of Transportation or staff.

11 MR. HEALEY: That's correct, Your Honor. The
12 railroad takes no position on the motion one way or
13 another.

14 JUDGE DUGGAN: Very good.

15 I would have already granted the
16 motion but for one thing which is that the
17 intervenors state in their paragraph 7 that paragraph
18 26 of the petition, even after the motion to amend,
19 if it were granted, would continue to contain an
20 allegation as to the need for the proposed bridge, so
21 I wanted to get Mr. Ellis's position on that and give
22 him a chance to comment or amend or do whatever he

1 wanted to do.

2 So is that your intention, that the
3 petition continue to contain that allegation?

4 MR. ELLIS: Yes, Judge.

5 JUDGE DUGGAN: Okay. Knowing full well what
6 Mr. McNamara's position will be, is that correct?

7 MR. ELLIS: Yes, Judge.

8 JUDGE DUGGAN: Okay. Well, then, your motion
9 to amend will be granted.

10 I will make those changes on the
11 original petition and make copies and have them filed
12 as the amended pages so they should be available to
13 the parties in that fashion on e-Docket.

14 Any comment or suggestion to the
15 contrary on handling that, Mr. Ellis?

16 MR. ELLIS: I don't believe so, Judge.

17 Am I correct in understanding that you
18 are actually going to incorporate this motion into an
19 amended petition and that's what then will be
20 before --

21 JUDGE DUGGAN: No. I intend to go get the
22 original petition, the hard copy file, assuming that

1 there was one. Maybe there wasn't.

2 MR. ELLIS: No, there is, there is.

3 JUDGE DUGGAN: Okay. And then write on that
4 the changes or cross out whatever you intended to
5 change.

6 MR. ELLIS: Okay.

7 JUDGE DUGGAN: Then make copies of those
8 particular pages and have them filed as the amended
9 pages per the motion and granting that motion.

10 MR. ELLIS: Okay.

11 JUDGE DUGGAN: Then that way, they'll be
12 separately docketed so you can identify them in the
13 docket as well as you can access copies of those
14 pages through e-Docket.

15 Any objections to proceeding in that
16 fashion, Mr. McNamara?

17 MR. McNAMARA: No, Judge. I'm just wondering,
18 while we're on that subject, I know Jon initially
19 amended the petition verbally as to the railroad. Do
20 we have any need to do that for the railroad? You
21 know, we had the wrong railroad named initially, and
22 I just wonder if we need at least the cover page. I

1 don't know. I have no strong feeling one way or
2 another. We know who the railroad is now, or maybe
3 it was amended. I don't know.

4 JUDGE DUGGAN: The caption has been amended.

5 MR. McNAMARA: Okay.

6 JUDGE DUGGAN: I'd have to go back and see what
7 record I made of that, whether I actually made a
8 ruling on that, but certainly it was on the record.

9 Okay. Other than that aside, you have
10 no objection to the manner I propose in
11 incorporating?

12 MR. McNAMARA: No, sir, none.

13 JUDGE DUGGAN: Okay. Mr. Healey, any problem
14 with the manner of amending by interlineation that I
15 have stated?

16 MR. HEALEY: No, no problem, Your Honor.

17 JUDGE DUGGAN: Very good.

18 Mr. Von De Bur?

19 MR. VON DE BUR: No objection, Your Honor.

20 JUDGE DUGGAN: Okay. Good deal.

21 Okay. Then understanding that the
22 petition will read as modified by the amendment, I

1 think we've already discussed, and I don't think
2 there's any need to rehash here, that with the
3 previous briefings, I've told you the way I view it
4 on both what is needed for proof and what is not
5 needed, and so you can anticipate and prepare your
6 cases accordingly.

7 Clearly, you have the right to make
8 whatever presentation you want to attempt to argue
9 your case or to preserve your case, but in allocating
10 your resources and advising your clients, I've told
11 you how I view it.

12 So with that in mind, and again,
13 unless somebody has something they want to discuss,
14 the only other thing I know we were going to try to
15 do here today was determine what discovery, how that
16 was proceeding, what you needed, what time frames
17 there were.

18 Has anybody gotten an outstanding
19 discovery request?

20 Mr. McNamara?

21 MR. McNAMARA: I don't believe I've received
22 one nor have I tendered one, Judge.

1 JUDGE DUGGAN: Okay. Oh, I thought you did
2 have a discovery request for Mr. Ellis.

3 MR. McNAMARA: I don't believe any formal
4 discovery as I recall. Jon, you correct me if I'm
5 wrong.

6 JUDGE DUGGAN: Okay.

7 MR. ELLIS: No, Judge. I think the only
8 discovery involved was my production of a lot of
9 pages of documents pursuant to your request early on.

10 JUDGE DUGGAN: Okay. Does anybody anticipate
11 submitting formal discovery requests?

12 Mr. Ellis?

13 MR. ELLIS: Judge, I don't, but I think a
14 statute is about to complicate this matter
15 tremendously.

16 JUDGE DUGGAN: Sure.

17 MR. ELLIS: And looking at Section 18c-2105 of
18 the Illinois Commercial Transportation Law, if I'm
19 reading this correctly, the statute states that
20 discovery must be completed by the 30th day after the
21 party filed its petition for leave to intervene.

22 I believe the intervenors filed their

1 petition September of 2011, clearly way beyond the
2 30-day time period.

3 JUDGE DUGGAN: Okay. Well, let's see if
4 there's a problem to resolve first.

5 Do you anticipate any discovery
6 request, any formal discovery request?

7 MR. McNAMARA: Not at this time, Judge.

8 JUDGE DUGGAN: Okay. What about disclosures of
9 witnesses or experts?

10 MR. ELLIS: I've done that.

11 JUDGE DUGGAN: Okay. You've done that.

12 What about you, Mr. McNamara?

13 MR. McNAMARA: It's going to depend on Jon's
14 case, what he puts on. I don't know what he's going
15 to put on at this time, and I'm not trying to be cute
16 about it. I will call my witnesses depending upon
17 what Jon puts on.

18 JUDGE DUGGAN: Okay. And have you given him
19 your witness list as you anticipate it today?

20 MR. McNAMARA: No, and I don't think Jon has
21 given me one either.

22 MR. ELLIS: I believe I have, Ed.

1 MR. McNAMARA: I don't recall but that's...

2 MR. ELLIS: I disclosed five individuals.

3 MR. McNAMARA: Okay.

4 JUDGE DUGGAN: Okay. Are you requesting his
5 witness list?

6 MR. ELLIS: I think I may have requested that
7 quite some time ago, and if I recall correctly,
8 William Cope was the only name that was mentioned.

9 MR. McNAMARA: I don't recall it, Jon, but, I
10 mean...

11 MR. ELLIS: Because at the time, Mr. Cope was
12 facing some personal issues involving his wife's
13 health, and he was I believe in New York.

14 MR. McNAMARA: He's the expert witness.

15 MR. ELLIS: Okay.

16 MR. McNAMARA: And I might even have an
17 additional expert now.

18 MR. ELLIS: Okay.

19 JUDGE DUGGAN: All right. Well, let's start
20 with nonexperts.

21 Do you believe you've made a formal
22 request or an informal request of his witnesses or

1 have you made either one?

2 MR. ELLIS: Judge, I believe I have, but I
3 would like an opportunity to review my file. I
4 believe I made a request to Mr. McNamara for
5 disclosure of his witnesses.

6 JUDGE DUGGAN: And did you make a request of
7 Mr. Ellis?

8 MR. McNAMARA: I don't believe so, Judge. I
9 don't know. I'll have to go back and look.

10 JUDGE DUGGAN: Okay. Well, then in a second,
11 we're going to take a break and see what you're going
12 to do because I think when we leave here today, we
13 need to have an idea of who wants to proceed with the
14 formal request so that we can conduct a hearing in an
15 orderly fashion without undue surprise and the
16 opportunity to depose witnesses as they can be
17 reasonably anticipated.

18 So I think everybody should at least
19 have that opportunity to do so, and then those who
20 don't take advantage of the opportunity and if we get
21 caught up short, then we'll have to deal with that as
22 that arises.

1 So other than witnesses, nonexperts
2 and experts, the only other issue would be
3 depositions.

4 You say that you believe you have
5 disclosed to Jon an expert?

6 MR. McNAMARA: One expert so far, and I think I
7 might have another one, Judge.

8 JUDGE DUGGAN: Okay. Do you anticipate
9 deposing his experts?

10 MR. ELLIS: Several months ago I did, Judge.
11 At this point in time, I'm ready to proceed with
12 hearing.

13 JUDGE DUGGAN: So the answer is you're not
14 going to depose his experts in any event?

15 MR. ELLIS: Well, if the issues have been
16 sufficiently narrowed, I am assuming that Mr. Cope
17 will not be allowed to testify as an engineer. I
18 don't believe he is an engineer, and so I would be
19 filing a motion to exclude his testimony because he's
20 not an engineer.

21 JUDGE DUGGAN: Okay. Well, that would
22 certainly be helpful to get those issues addressed up

1 front.

2 MR. ELLIS: And as far as his second witness, I
3 don't know if that is an engineer or not.

4 JUDGE DUGGAN: Probably to do a motion to
5 exclude the witness or in limine, I guess I don't
6 know where you're going to be able to establish
7 everything that's needed. In other words, I need to
8 know what he intends to testify to and what his
9 credentials for testifying to are, and is it relevant
10 and is he qualified.

11 Did his written discovery provide that
12 information?

13 MR. ELLIS: It did not. I don't think there's
14 been any written discovery.

15 JUDGE DUGGAN: I'm sorry. I didn't mean
16 written discovery. I mean his disclosure of witness.

17 MR. ELLIS: If I recall correctly, Judge, I
18 believe it was an oral disclosure.

19 Ed, I don't know if I have anything
20 actually in writing from you saying William Cope is
21 your witness.

22 MR. McNAMARA: I don't know if you do or not,

1 Jon. I think what you're saying is a fair
2 representation.

3 JUDGE DUGGAN: Okay. If you're relying upon an
4 oral representation, the Commission wants informal
5 discovery, then I think it's fair for you to make
6 your motion based upon the oral representation, and
7 if Mr. McNamara wants to deny it, he can deny it.

8 So it sounds to me like you have a
9 basis for your motion.

10 MR. ELLIS: I think so, Judge, I think so.

11 JUDGE DUGGAN: Now, if you say you may have
12 another witness, is there a reason why you've not
13 told him about that one?

14 MR. McNAMARA: Because I'm just getting him,
15 Judge. It's a new witness.

16 JUDGE DUGGAN: Okay. Well, I mean, I think,
17 are you not interested in who this person is, Jon?

18 MR. ELLIS: Yes, I'm very interested, Judge.

19 JUDGE DUGGAN: Okay. Well, then it would seem
20 to me then that where we are is sitting waiting for
21 that disclosure.

22 When do you think you'll know?

1 MR. McNAMARA: I'll discuss it with my clients
2 this week and be back with Jon no later than close of
3 business on Friday.

4 JUDGE DUGGAN: Friday, the 28th?

5 MR. McNAMARA: Yes, sir.

6 JUDGE DUGGAN: September 28th.

7 Okay. So nonexperts, you're satisfied
8 with whatever witness disclosure you've got, or are
9 you objecting to witnesses that he's not disclosed?

10 MR. ELLIS: Well, again, Judge, going back, my
11 recollection is his client consists of 26 landowners.

12 MR. McNAMARA: I think it's 24 but it could be
13 26.

14 MR. ELLIS: Something more than 20.

15 MR. McNAMARA: 24 more or less.

16 MR. ELLIS: More or less, and that I had made a
17 request at some point, and I believe it was on the
18 record, to narrow that group of witnesses because I
19 sensed that their testimony might be redundant.

20 As far as I can recall, nothing has
21 been done.

22 JUDGE DUGGAN: In other words, he told you that

1 all of them were potential witnesses?

2 MR. ELLIS: I think he may have -- well, Ed can
3 answer this better than I can. I think he
4 represented that he had 26 members of this
5 unincorporated association who were potential
6 witnesses in this case, and Ed, please correct me if
7 I'm wrong.

8 MR. McNAMARA: I think you're representing just
9 what I said.

10 JUDGE DUGGAN: Is there a reason that they
11 couldn't be narrowed down?

12 MR. McNAMARA: I don't believe so, Judge. I
13 don't want to put a lot of repetitive testimony on,
14 Judge, but I don't know at this time.

15 I think we're going to narrow it down
16 considerably.

17 JUDGE DUGGAN: Okay. Well, I think part of the
18 reason of prehearing conferences is to narrow issues
19 and to streamline the hearing.

20 MR. McNAMARA: Sure.

21 JUDGE DUGGAN: And so I think that, I mean, I
22 would have to make an educated guess that 24 of them

1 aren't going to contribute different stuff, so I do
2 think that, you know, if Jon wants it, and it sounds
3 like now he is saying he would like it, he would like
4 to know who the potential witnesses are and have it
5 narrowed down to some practical reasonable level
6 because, he's correct, we're not going to have 24
7 witnesses come in and testify to the same thing.

8 MR. McNAMARA: No.

9 MR. O'BRIEN: Judge, let me ask this question
10 of Mr. Ellis.

11 Are you going to present written
12 testimony from all three of your witnesses before the
13 hearings begin?

14 And the reason why I'm asking this
15 question is this. Until we know -- we may know who's
16 going to testify, but until we know what they're
17 going to testify to, it's very, very difficult to
18 pick out from a list of 20, 24, 16 or 5 which one of
19 those witnesses may be the one that we want to
20 present to rebut something.

21 So if, in fact, we had copies of
22 written testimony from each witness you're going to

1 present and their testimony is limited to that
2 subject matter, then it would be much easier to say
3 yes, these four are the four we're going to use or
4 this expert or these two experts are the two experts
5 we're going to use, but I don't think we want to be
6 put in a position of saying, without knowing what
7 we're going to have to rebut, who we're going to use
8 to rebut it.

9 You know, it could be one of these
10 witnesses has some key information that none of the
11 others have. I mean, everybody's land is a little
12 bit different, located a little bit different, and I
13 think that would be one objection I would see from
14 the intervenors as putting a limit on who can testify
15 before we even know what the direct case is going to
16 be.

17 JUDGE DUGGAN: Well, I think that before you
18 get to that stage, I would like to know what any of
19 these people might testify to that is going to be
20 relevant to the pertinent issues.

21 Now, maybe his answer was going to be,
22 yes, I've got it all done and all ready, and so

1 there's no problem, but in any event, I do think that
2 before we get drug down too far, I'll let you know
3 that I'm going to want to know what these witnesses
4 are going to testify to and what relevance before
5 we --

6 MR. O'BRIEN: Now, are you talking about
7 petitioner's witnesses or intervenor's witnesses?

8 JUDGE DUGGAN: Yours. In other words, you just
9 told Jon that if he did prefiled testimony, that
10 would help you prepare your case, and, you know,
11 normally, obviously, in these type of cases we don't
12 have prefiled testimony.

13 MR. O'BRIEN: That's correct.

14 JUDGE DUGGAN: If Jon was going to do it, I'd
15 say, well, then he could have answered your question
16 very easy and the answer could have been yes, and we
17 wouldn't need to be talking right now, but I'm
18 letting both you of know that before we get too far
19 drug down and astray into battles that don't need to
20 be fought, I'm going to want to know to know myself
21 exactly what you believe these witnesses may testify
22 to and why it's relevant. So I'm just letting you

1 know that before we get into the next discussion.

2 So, Jon, you can go ahead and answer,
3 Mr. O'Brien's question.

4 MR. ELLIS: Well, Judge, I have disclosed five
5 witnesses. They are all engineers. They are
6 basically I believe, under the rule, controlled
7 witnesses on my side. I do not have any written
8 testimony that I'm preparing to prefile in this case.
9 I simply have five engineers that will be providing
10 testimony.

11 JUDGE DUGGAN: And again, did you ask for the
12 disclosure of that?

13 MR. McNAMARA: I don't believe so, Judge. I
14 don't know. I...

15 JUDGE DUGGAN: Okay. That's right.

16 MR. McNAMARA: This is an old case.

17 MR. ELLIS: Judge, I think I have something in
18 my file that will show that disclosure.

19 JUDGE DUGGAN: And that you already disclosed
20 it?

21 MR. ELLIS: Correct.

22 JUDGE DUGGAN: So if you deposed them, then

1 you'd know the answer.

2 Let's go off the record now.

3 (Whereupon an off-the-record
4 discussion transpired at this
5 time.)

6 JUDGE DUGGAN: The discussion again off the
7 record was whether Mr. O'Brien was suggesting to have
8 prefiled testimony and the direct be put on and then
9 a different day be set for intervenors with the
10 understanding that intervenors would not even have to
11 be narrowed or limited in their witness list until
12 they have seen the case in chief, and I believe
13 Mr. O'Brien indicated to me that's not what he was
14 suggesting but that nonetheless, they shouldn't be
15 limited till they see the case and that he did not
16 believe that, excuse me, the case in chief, and he
17 did not believe the case could be put on in one day
18 in any event.

19 Other than that, I was trying to
20 clarify where I thought Mr. McNamara had indicated
21 that he could narrow his witness list from the 24
22 landowners, and I thought Mr. O'Brien was suggesting

1 that they should not be required to do so.

2 So that's what I understood to be
3 happening off the record.

4 Mr. O'Brien, is that fair?

5 MR. O'BRIEN: Yeah, but I can see...

6 JUDGE DUGGAN: No, no. Is that a fair summary
7 of what happened off the record?

8 MR. O'BRIEN: Yes, that's a fair summary.

9 JUDGE DUGGAN: Was that a fair summary off the
10 record, Mr. McNamara?

11 I'm just asking if I stated it
12 correctly. I'm not asking for any other debate.

13 We did stuff off the record that went
14 further than I wanted, and now I need to make the
15 record of what we did.

16 MR. McNAMARA: I think it's a fair summary,
17 Judge.

18 May I say this. I'm anticipating that
19 we're not going to do this traditionally in the
20 transportation division.

21 JUDGE DUGGAN: I know. First I simply want to
22 get on the record that what I said off the record was

1 a fair summary.

2 Was it a fair summary, Mr. Ellis?

3 MR. ELLIS: Yes, Judge.

4 JUDGE DUGGAN: Okay. Mr. Healey, was it a fair
5 summary?

6 MR. HEALEY: Yes, sir.

7 JUDGE DUGGAN: Okay. Now...

8 MR. McNAMARA: Traditionally in the
9 transportation cases, the petitioners go forward and
10 present their case. Then the intervenors review the
11 case and decide what, if any, testimony they're going
12 to present.

13 As you well know, you've done this for
14 a number of years, in some instances, the intervenors
15 don't even come back with testimony. In some
16 instances they do, but until the case in chief goes
17 in, we don't know really what our response is going
18 to be.

19 JUDGE DUGGAN: Okay. Do you have a problem
20 with doing it that way, Jon?

21 It certainly resolves an issue today.
22 It just says you're going to put your case on one

1 day. They're going to put on their case another day,
2 apparently with enough time in between for you to
3 assess your preparation in response to what they
4 intend to present.

5 MR. ELLIS: And also, no preclusion of any
6 motions that I might want to file to exclude
7 witnesses.

8 JUDGE DUGGAN: Absolutely.

9 MR. ELLIS: Fine.

10 JUDGE DUGGAN: Okay. Any problem,
11 Mr. McNamara?

12 MR. McNAMARA: Agreed.

13 JUDGE DUGGAN: Mr. O'Brien?

14 MR. O'BRIEN: Fine with me.

15 JUDGE DUGGAN: Okay. Good deal.

16 So what I take from that is that you
17 don't want to be required or expected to limit your
18 witness list until you've seen his case in chief, and
19 I think that we've just said that that's agreeable
20 with Mr. Ellis.

21 MR. ELLIS: That's correct, Judge.

22 JUDGE DUGGAN: Assuring that there will be no

1 prejudice to Mr. Ellis's ability to prepare his case.

2 MR. ELLIS: Or surprise.

3 JUDGE DUGGAN: And that, in fact, the witness

4 list will be prepared down afterwards.

5 Okay. Let's go off the record.

6 (Whereupon an off-the-record
7 discussion transpired at this
8 time.)

9 JUDGE DUGGAN: We clarified off the record, and
10 Mr. Ellis says that he did provide Mr. McNamara with
11 the names of five different experts that he intends
12 to call. That does include all of the witnesses that
13 Mr. Ellis intends to call.

14 Is that correct, Mr. Ellis?

15 MR. ELLIS: That is correct, Judge.

16 JUDGE DUGGAN: Okay. And you believe you've
17 received that, Mr. McNamara, but if not, Jon has
18 represented he can provide you another copy.

19 Is that correct, Mr. Ellis?

20 MR. ELLIS: That is correct.

21 JUDGE DUGGAN: Is that correct, Mr. McNamara?

22 MR. McNAMARA: That is correct, Judge.

1 JUDGE DUGGAN: Okay. And that Mr. Ellis has
2 requested of Mr. McNamara, whether formally or
3 informally, his disclosure. He's provided the name
4 of one expert. He's going to determine whether he is
5 has another expert and disclose that by Friday,
6 September 28th, and he's disclosed that he may call
7 any or all of the landowners who are intervenors.
8 Correct, Mr. McNamara?

9 MR. McNAMARA: Correct, Judge.

10 JUDGE DUGGAN: And is that correct, Mr. Ellis?

11 MR. ELLIS: Correct, Judge.

12 JUDGE DUGGAN: And does that disclosure meet
13 your needs at this time?

14 MR. ELLIS: At this time?

15 JUDGE DUGGAN: At this time.

16 MR. ELLIS: At this time it does, Judge, at
17 this time.

18 JUDGE DUGGAN: Until you've put on your case in
19 chief and we get prepared to determine how you may
20 want to examine their witnesses, correct?

21 MR. ELLIS: That is correct, Judge.

22 JUDGE DUGGAN: All right. Then did you say

1 whether or not you had -- oh, you said that you did
2 not intend to depose the experts he's already
3 disclosed; is that correct, Mr. Ellis?

4 MR. ELLIS: Judge, I did intend to do that
5 several months ago...

6 JUDGE DUGGAN: But at this time.

7 MR. ELLIS: ...at which time it was represented
8 to me that he was unavailable.

9 MR. McNAMARA: Correct, Jon.

10 MR. ELLIS: Okay. Again, I have five engineers
11 who will be testifying. I do not believe Mr. Cope,
12 the intervenor's witness, is an engineer.

13 JUDGE DUGGAN: Oh, you're going to file your
14 motion to exclude before you depose him?

15 MR. ELLIS: Correct.

16 JUDGE DUGGAN: Okay. So the motion to exclude,
17 and then you decide whether to depose, and then you
18 can't comment on the other one till he's disclosed.

19 MR. ELLIS: Exactly, Judge.

20 JUDGE DUGGAN: Okay. So where we're at is
21 getting your motion to exclude filed. So how long do
22 you need to do that?

1 MR. ELLIS: Next Wednesday.

2 JUDGE DUGGAN: Great, great, because the
3 standard is 14 and 7, 14 for response and seven for
4 anybody's reply.

5 So let's do what we did before. I
6 can't remember what I did before, if I gave you
7 specific dates or if I just told you -- I told you
8 whenever you file yours, he's got 14 and then you've
9 got 7?

10 MR. ELLIS: That is correct.

11 JUDGE DUGGAN: Okay. That's what we're going
12 to do then.

13 Any objection to that, Mr. McNamara?

14 MR. McNAMARA: No. It's according to the
15 rules, Judge.

16 JUDGE DUGGAN: I mean, just not setting a
17 specific date telling him he can --

18 MR. McNAMARA: No, that's fine. Sure.

19 JUDGE DUGGAN: Okay. Presuming that he's going
20 to act expeditiously so we can move this along.

21 It appears to me that's all we can do,
22 and then we're going to come back in November and see

1 what else we can do.

2 Do you have any other matter?

3 MR. McNAMARA: I have nothing, Judge.

4 JUDGE DUGGAN: Okay. Mr. O'Brien?

5 MR. O'BRIEN: Nothing.

6 JUDGE DUGGAN: Okay. Mr. Ellis, as far as
7 whether we need to do anything else today?

8 MR. ELLIS: No, Judge.

9 JUDGE DUGGAN: Okay. Mr. Healey?

10 MR. HEALEY: I have nothing, Judge.

11 JUDGE DUGGAN: Okay. And Mr. Von De Bur?

12 MR. VON DE BUR: Nothing here, Your Honor.

13 JUDGE DUGGAN: Okay. Have I left anybody out
14 on any of their opinions in discussion? Did anybody
15 else have anything else to say? Mr. Healey, did you
16 have anything to contribute?

17 MR. HEALEY: No, Your Honor. Thank you for
18 asking though.

19 JUDGE DUGGAN: Sure.

20 Mr. Von De Bur?

21 MR. VON DE BUR: No, sir.

22 JUDGE DUGGAN: Okay. I think that covers

1 everything so I will set a date commensurate with the
2 time for filing and responses in mid November.

3 Thank you very much.

4 (Whereupon the hearing was
5 continued generally.)
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